

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA ex rel.
PATRICK MORRISEY,
Attorney General,

Plaintiff/Petitioner,

v.

Civil Action No. _____

FREDERICK LEE TARMON, SR. individually
and d/b/a TARMON AND SON
and d/b/a COMPLETE HANDYMAN SERVICE and
FREDERICK LEE TARMON, JR. individually and
d/b/a TARMON AND SON and d/b/a
COMPLETE HANDYMAN SERVICE,

Defendants/Respondents.

**COMPLAINT AND PETITION FOR
PRELIMINARY AND PERMANENT INJUNCTION**

This action is brought pursuant to the West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-1-101 *et seq.* (hereinafter “the Act”). Plaintiff/Petitioner, the State of West Virginia ex rel. Patrick Morrissey, Attorney General (hereinafter “the State”) has reason to believe the above-named Defendants/Respondents, Frederick Lee Tarmon, Sr., and Frederick Lee Tarmon, Jr., both individually and doing business as Tarmon and Son, have violated the Act. The State brings this action to enjoin and restrain Defendants from engaging in unfair or deceptive acts or practices in contracting services of any kind. The State also seeks preliminary injunctive relief and other equitable relief including, but not limited to, restitution for consumers who were harmed by Defendants’ business practices, court costs, investigative costs, attorneys’ fees, and penalties of Five Thousand Dollars (\$5,000) for each violation of the Act.

I. PARTIES

1. The State brings this action by and through Patrick Morrissey, Attorney General for the State of West Virginia. The Attorney General is authorized to bring this action pursuant to W. Va. Code §§ 46A-7-108, -110, and -111.

2. Frederick Lee Tarmon, Sr. and Frederick Lee Tarmon, Jr. engage or engaged in the business of contracting as defined by the West Virginia Contractor Licensing Act (“WVCLA”), W. Va. Code § 21-11-3, and the West Virginia Contractor Licensing Board’s (“Board”) Legislative Rule, W. Va. Code R. § 28-2-3.9.

3. Frederick Lee Tarmon, Sr. and Frederick Lee Tarmon, Jr. have engaged in said business in this State under the trade name “Tarmon and Son” and “Complete Handyman Service” in Jefferson County, West Virginia (Frederick Lee Tarmon, Sr., Frederick Lee Tarmon, Jr., and Tarmon and Son hereinafter collectively referred to as “Tarmon”). Frederick Tarmon, Sr. and Frederick Tarmon, Jr. are residents of Jefferson County, West Virginia.

4. "Tarmon and Son" is not and was not a registered business entity and failed to file appropriate documentation to register to conduct business as a business entity with the West Virginia Secretary of State’s Office.

5. Tarmon is not and was not a licensed West Virginia contractor.

6. Tarmon is not and was not an insured business.

7. Tarmon entered into contracts to perform work and/or did perform contracting work for several West Virginia residents without a valid contractor’s license and insurance, despite advertising on its business card that Tarmon’s license number was 2015-1368.

8. Prior to doing business as Tarmon and Son, Frederick Tarmon, Sr. was an owner

of F & J Handyman Services. On September 2, 2014, The West Virginia Division of Labor issued a Cease and Desist Order for Frederick Tarmon, Sr., and F & J Handyman Services because they were engaging in contracting activities without a contractor's license. On October 23, 2014, the Board entered a Final Order and fined F & J Handyman Services \$200.00 for engaging in business in West Virginia without a valid license.

II. JURISDICTION AND VENUE

9. This Court has jurisdiction to hear this matter pursuant to Article VIII, Section 6 of the West Virginia Constitution and W. Va. Code § 51-2-2.

10. Venue is proper in this Court pursuant to W. Va. Code §§ 46A-7-114 and 56-1-1.

III. FACTS

11. In 2015, the West Virginia Attorney General's Office ("Office") commenced an investigation of the business practices of Tarmon after receiving complaints from individuals and consumers that Tarmon had taken their money and had not finished the paid-for contractor services.

12. The Office received consumer complaints from John F. Torrence and Daniel E. Wilt.

13. Through its investigation of Tarmon, the Office has also identified three other consumers who have similar experiences with Tarmon.

John F. Torrence

14. John F. Torrence and his wife, Margaret Torrence, are residents of Charles Town, Jefferson County, West Virginia.

15. On or about June 10, 2015, Tarmon and Son left a business card at the Torrence home. The business card advertised that the owner was "Fred Tarmon," and the contractor's license number was "License # 2015-1368." The card stated that Tarmon & Son provided the following services: carpentry, painting, roofing, landscaping, etc.

16. On June 11, 2015, Frederick Tarmon, Sr. stopped by the Torrence residence. He stated that the place was a mess, and he offered Tarmon & Son's services to help clean up the landscaping. Frederick Tarmon, Sr. quoted a price of One Thousand Dollars (\$1,000) to haul away trash from the home, including lots of seeds and a tree limb on the garage roof.

17. John F. and Margaret Torrence hired Tarmon to collect and haul away the trash from the lot, including trimming hedges, removing certain bushes, removing the tree limb from the garage roof, removing seeds from the roof, and general clean up of landscaping for One Thousand Dollars (\$1,000). Tarmon failed to provide any handwritten estimate or contract for this work.

18. Frederick Tarmon, Sr. then left and later returned with four others, including his son, Frederick Tarmon, Jr.

19. Frederick Tarmon, Sr., Frederick Tarmon, Jr., and three other individuals started to complete some of the work. At about dark, Frederick Tarmon, Sr. told John F. Torrence they had finished the job.

20. At that point, it was difficult for John F. Torrence to inspect and verify what tasks had been completed because it was dark. However, John F. Torrence paid Tarmon with a personal check for One Thousand Dollars (\$1,000). Frederick Lee Tarmon, Sr. endorsed and cashed the check on the same date, June 11, 2015.

21. On June 12, 2015, John F. Torrence looked over his property and noticed that the

hedges were not trimmed, certain bushes that were to be removed were untouched, the branch and seeds were not removed from the garage roof, the weeds were not pulled, and no work was completed in the backyard. John F. Torrence then called Frederick Tarmon, Sr. to meet with him and discuss the landscaping job. Frederick Tarmon, Sr. agreed to meet on Saturday, June 13, 2015.

22. Frederick Tarmon, Sr. did not show up on June 13, 2015. Later that night, Frederick Tarmon, Sr. told John F. Torrence in a telephone conversation that he had an emergency and would meet with him on Monday, June 15, 2015 at 11:30 a.m.

23. On June 15, 2015, Frederick Tarmon, Sr. failed to meet with John F. Torrence. When John F. Torrence called Frederick Tarmon, Sr., the call immediately went to his voicemail and John F. Torrence left a message.

24. On June 16, 2015, John F. Torrence called Frederick Tarmon Sr. and asked him to stop at his home before 11:00 a.m.

25. Frederick Tarmon, Sr. failed to stop at the Torrence residence.

26. On July 15, 2015, John F. Torrence filed a complaint for contractor fraud with the Consumer Protection and Antitrust Division of the West Virginia Attorney General's Office.

27. John F. Torrence reported that Tarmon failed to weed whack the yard, trim the hedges by four feet, remove the tree limb on the garage roof, trim the hedge at the end of the driveway, and haul away the trash.

28. John F. Torrence is ninety years old, and he is physically unable to complete any of the work he hired Tarmon to complete.

29. John F. Torrence was forced to obtain help from other individuals to complete the work that Tarmon failed to complete

30. To date, Tarmon has failed to complete the work or refund John F. Torrence's money.

Daniel E. Wilt

31. Daniel Wilt is a resident of Charles Town, Jefferson County, West Virginia.

32. On July 6, 2015, Daniel Wilt hired Tarmon to paint and remodel certain rooms in his home, including the kitchen, a bathroom, and a bedroom, for Five Thousand and Five Hundred Dollars (\$5,500). Daniel Wilt learned of Tarmon from Frederick Tarmon, Sr. going door-to-door offering his services.

33. Daniel Wilt agreed to pay Tarmon Two Thousand and Five Hundred Dollars (\$2,500) for labor prior to the start of the project and Three Thousand Dollars (\$3,000) upon completion of the project. The project included, but is not limited to, installing drywall, painting the house, removing a bathtub, installing a new shower, replacing double sinks, and installing carpet.

34. On July 4, 2015, Daniel Wilt paid Fred Tarmon, Sr. Seven Hundred Dollars (\$700) by personal check.

35. On July 6, 2015, Daniel Wilt paid Fred Tarmon, Sr. Two Thousand and Five Hundred Dollars (\$2,500) by personal check.

36. On July 7, 2015, Daniel Wilt paid Fred Tarmon, Sr. One Thousand Dollars (\$1,000) by personal check.

37. On July 9, 2015, Daniel Wilt paid Fred Tarmon, Sr. One Thousand Dollars (\$1,000) by personal check.

38. On July 14, 2015, Daniel Wilt paid Fred Tarmon, Sr. One Thousand and Two Hundred Dollars (\$1,200) by personal check.

39. On July 20, 2015, Daniel Wilt paid Fred Tarmon, Sr. Five Hundred Dollars (\$500) by personal check.

40. On July 21, 2015, Daniel Wilt paid Fred Tarmon, Sr. Three Hundred Dollars (\$300) by personal check.

41. On July 24, 2015, Daniel Wilt paid Fred Tarmon, Sr. Nine Hundred Dollars (\$900) by personal check.

42. On July 25, 2015, Daniel Wilt paid Fred Tarmon, Sr. Four Hundred Dollars (\$400) by personal check.

43. On July 27, 2015, Daniel Wilt paid Fred Tarmon, Jr. One Hundred and Fifty Dollars (\$150) by personal check.

44. Tarmon had agreed to complete the work by August 8, 2015. The work was not completed by August 8, 2015.

45. On August 11, 2015, Daniel Wilt paid Fred Tarmon, Sr. Three Hundred Dollars (\$300) by personal check.

46. On August 12, 2015, Daniel Wilt paid Fred Tarmon, Sr. Six Hundred Dollars (\$600) by personal check.

47. On August 20, 2015, Daniel Wilt paid Fred Tarmon, Sr. One Hundred and Fifty Dollars (\$150) by personal check.

48. In total, Daniel Wilt paid Fred Tarmon, Sr. Nine Thousand and Five Hundred Dollars (\$9,500).

49. On September 17, 2015, Daniel Wilt filed a complaint for contractor fraud with the Consumer Protection and Antitrust Division of the West Virginia Attorney General's Office.

50. Tarmon has never completed the work and has not refunded Daniel Wilt's money.

Other Identified Consumers

51. Through the Office's investigation of the Torrence and Wilt complaints against Tarmon, up to the time of filing this Complaint and Petition for Preliminary and Permanent Injunction, the Office identified three other West Virginia consumers with similar complaints against Tarmon.

52. The three consumers also reside in Charles Town, Jefferson County, West Virginia.

53. The three consumers became familiar with Tarmon's service after he traveled door-to-door in their neighborhoods soliciting construction work or after hearing that he was performing work for a family member.

54. The three consumers hired Tarmon to complete various construction projects in their homes.

55. Tarmon failed to provide the consumers with a handwritten estimate for the transactions or any contract that would satisfy the Home Improvement Act.

56. Each consumer paid Tarmon by cash or personal check.

57. Tarmon took the money and cashed each and every check without completing the construction work.

58. Additionally, any work that was done by Tarmon was poor workmanship and unsatisfactory.

General Course of Deceptive Conduct

59. The Torrence and Wilt complaints as well as the complaints of the three other identified consumers are illustrative of a pattern of conduct in violation of the Act, including, but not limited to the following:

- A. Failing to meet agreed upon deadlines to complete services;
- B. Leaving a project incomplete and requiring work to be finished by another contractor;
- C. Refusing to refund consumers' money for services not performed or performed inadequately;
- D. Willfully and repeatedly engaging in the conduct described in this complaint;
- E. Failing to give consumers notices of their three-day right to cancel the contracts for in-home solicitation sales; and
- F. Failing to provide consumers a handwritten estimate for the transactions or any contract that would satisfy the Home Improvement Act.

COUNT ONE
(False Promise)

60. The State reasserts and incorporates herein the foregoing allegations of this Complaint and Petition for Preliminary and Permanent Injunction.

61. The Act prohibits “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” W. Va. Code § 46A-6-104.

62. The Act defines unfair methods of competition and unfair or deceptive acts or practices to include:

[t]he act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby.

See W. Va. Code § 46A-6-102(7)(M).

63. Tarmon's false promise that it would complete work is an unfair or deceptive act or practice and violates W. Va. Code § 46A-6-104, as defined by W. Va. Code § 46A-6-102(7)(M).

COUNT TWO
(Failure to Substantially Perform a Home Improvement Contract)

64. The State reasserts and incorporates herein the foregoing allegations of this Complaint and Petition for Preliminary and Permanent Injunction

65. The West Virginia Home Improvement Act (the "Act") prohibits "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." W. Va. Code § 46A-6-104.

66. The Act defines unfair methods of competition and unfair or deceptive acts or practices to include:

[t]he act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby.

See W. Va. Code § 46A-6-102(7)(M).

67. Tarmon is a "home improvement contractor" as defined by the Home Improvement Rule, W. Va. Code R. § 142-5-2.7, and was thus subject to the provisions of the Home Improvement Rule, W. Va. Code R. § 142-5-1, *et seq.*

68. Tarmon's acceptance of payments from West Virginia consumers but failure to substantially perform said contracts constitutes an unfair or deceptive act or practice and violates W. Va. Code § 46A-6-104, as defined by W. Va. Code R. § 142-5-3.1.8.

COUNT THREE
(False Advertisement)

69. The State reasserts and incorporates herein the foregoing allegations of this Complaint and Petition for Preliminary and Permanent Injunction

70. West Virginia Code § 46A-6-104 provides that “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

71. The Act defines unfair methods of competition and unfair or deceptive acts or practices to include:

[t]he act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby.

See W. Va. Code § 46A-6-102(7)(M).

72. Tarmon is a “home improvement contractor” as defined by the Home Improvement Rule, W. Va. C.S.R. § 142-5-2.7, and was thus subject to the provisions of the Home Improvement Rule, W. Va. C.S.R. § 142-5-1, *et seq.*

73. The Home Improvement Rule defines unfair or deceptive act or practices in the conduct of a home improvement contractor to include “mak[ing] any misrepresentation in the promotion, advertisement or sale of a home improvement contract or make any false promise of a character likely to influence, persuade or induce.” W. Va. C.S.R. § 142-5-3.1.9.

74. Tarmon advertised that they were a licensed contractor on his business card that he gave to consumers.

75. The West Virginia contractor's license number advertised by Tarmon on his business card was invalid.

76. Tarmon's false advertisement is an unfair or deceptive act or practice which violates W. Va. Code § 46A-6-104, as defined by W. Va. C.S.R. §142-5-3.1.8.

COUNT FOUR
(Failure to Provide Consumers with Adequate Contracts)

77. The State reasserts and incorporates herein the foregoing allegations of this Complaint and Petition for Preliminary and Permanent Injunction.

78. The Act prohibits "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." W. Va. Code § 46A-6-104.

79. The Home Improvement Rule states:

[i]n connection with any home improvement transaction, and without limitation by enumeration, it is an unfair or deceptive act or practice for any seller to: . . . Fail to provide the buyer a written contract, describing in a meaningful way, and in "plain language" as required by W. Va. Code § 46A-6-109, the goods or services purchased, the contract price. . .

See W. Va. C.S.R. § 142-5-3.1.1.

80. Tarmon's failure to provide buyers with a sufficient written contract is an unfair or deceptive act or practice and violates W. Va. Code § 46A-6-104, as explained by W. Va. C.S.R. §142-5-3.1.1.

COUNT FIVE
(Misleading Statements and Actions as to Project Cost)

81. The State reasserts and incorporates herein the foregoing allegations of this Complaint and Petition for Preliminary and Permanent Injunction.

82. The Act prohibits "unfair methods of competition and unfair or deceptive acts or

practices in the conduct of any trade or commerce.” W. Va. Code § 46A-6-104.

83. The Home Improvement Rules state that,

[i]n connection with any home improvement transaction, and without limitation by enumeration, it is an unfair or deceptive act or practice for any seller to: Mislead the prospective buyer into believing that the down payment or some other figure constitutes the full amount the buyer will be obligated to pay, or to omit or exclude any other obligations, fees, charges or costs to the buyer;

See W. Va. C.S. R. § 142-5-3.1.22.

84. Tarmon has misled buyers as to the total project cost which is an unfair or deceptive act or practice and violates W. Va. Code § 46A-6-104, as explained by W. Va. Code R. § 142-5-3.1.22.

COUNT SIX
(Failure to Provide Notice of Buyer’s Right to Cancel)

85. The State reasserts and incorporates herein the foregoing allegations of this Complaint and Petition for Preliminary and Permanent Injunction.

86. Tarmon enters into contracts with consumers at places other than his principal place of business, including consumers’ homes.

87. West Virginia Code § 46A-2-132 provides the buyer’s right to cancel in a home solicitation sale:

In addition to any other right to revoke an offer, a buyer shall have the right to cancel a home solicitation sale until midnight of the third business day after the day on which he has signed an agreement or offer to purchase. Cancellation shall become effective when the buyer gives written notice of his intention to cancel to the seller at the address stated in the agreement or offer to purchase. Notice of such cancellation, if given by mail, is given when it is deposited in a mailbox properly addressed and postage prepaid. Such notice of cancellation given by the buyer need not take any particular form and shall be sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the home solicitation sale

88. West Virginia Code § 46A-1-102(22) defines a "home solicitation sale" as:

a consumer credit sale in excess of twenty-five dollars in which the buyer receives a solicitation of the sale at a place other than the seller's business establishment at a fixed location and the buyer's agreement or offer to purchase is there given to the seller or a person acting for the seller. The term does not include a sale made pursuant to a preexisting open-end credit account with the seller in existence for at least three months prior to the transaction, a sale made pursuant to prior negotiations between the parties at the seller's business establishment at a fixed location, a sale of motor vehicles, mobile homes or farm equipment or a sale which may be rescinded under the federal Truth in Lending Act (being Title I of the federal Consumer Credit Protection Act). A sale which would be a home solicitation sale if credit were extended by the seller is a home solicitation sale although the goods or services are paid for, in whole or in part, by a consumer loan in which the creditor is subject to claims and defenses arising from the sale.

89. Tarmon's door-to-door contracts are home solicitation sales subject to the West Virginia Code's Home Solicitation Sale statutes.

90. Tarmon fails to give consumers written notice of the three-day buyer's right to cancel. Failure to provide consumers with notice of the three-day right to cancel is a violation of the West Virginia Code and constitutes an unfair or deceptive act or practice in violation of W. Va. Code § 46A-6-104.

COUNT SEVEN - INJUNCTIVE RELIEF

91. The State reasserts and incorporates herein the foregoing allegations of this Complaint and Petition for Preliminary and Permanent Injunction.

92. The Act, referenced in W. Va. Code §§ 46A-7-108 and -109, specifically provides for injunctive relief to prevent unconscionable agreements and fraudulent and/or unconscionable conduct.

93. Tarmon has engaged in practices that resulted in harm and/or were likely to result in harm to West Virginia consumers.

94. It is necessary and essential to stop Tarmon from engaging in future contracting work in the State of West Virginia due to Tarmon's willful, wanton, and flagrant unlawful practices to consumers.

IV. PRAYER FOR RELIEF

95. Wherefore, the State prays for relief and judgment against Defendants:

A. A prohibitory and permanent injunction against Tarmon to prohibit Defendants from engaging in unfair or deceptive acts or practices in conjunction with contracting work and establishing a Five Thousand Dollar (\$5,000) fine for each infraction thereof;

B. Restitution for consumers;

C. Civil penalties of up to Five Thousand Dollars \$5,000 to the State of West Virginia for each violation of the WVCCPA, as authorized by W. Va. Code § 46A-7-111(2);

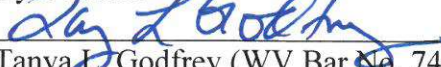
D. An Order directing that Tarmon pay for the State's reasonable attorney's fees, expert witness fees, and other costs of this action; and

E. An Order granting further relief, as the Court deems just and proper, to which the State may be entitled.

Respectfully submitted:

STATE OF WEST VIRGINIA, ex rel.
PATRICK MORRISEY,
ATTORNEY GENERAL

By Counsel




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VERIFICATION

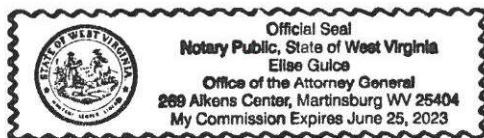
**STATE OF WEST VIRGINIA,
COUNTY OF JEFFERSON, TO-WIT:**

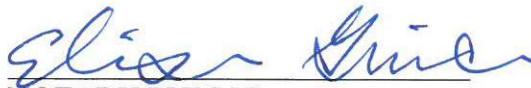
I, Tanya L. Godfrey, Assistant Attorney General, being duly sworn, depose and say that I am the counsel of record for Plaintiff/Petitioner in the foregoing styled civil action; that I am familiar with the contents of the foregoing **COMPLAINT AND PETITION FOR PRELIMINARY AND PERMANENT INJUNCTION**, and that the facts and allegations contained therein are true, except such as are therein stated upon information and belief, and that as to such allegations I believe them to be true.


TANYA L. GODFREY (WV State Bar # 7448)
ASSISTANT ATTORNEY GENERAL

Taken, subscribed, and sworn to before me in the County and State aforesaid this 26th day of April, 2016.

My commission expires June 25, 2023.




NOTARY PUBLIC